IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 601 of 2007

Judgement reserved on:

Date of decision: 19.9.2007.

State of H.P. **…..Petitioner- Appellant.**

Vs.

Satish Kumar **…. Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the petitioner : **Mr. M.L.Chauhan, Addl. Advocate General.**

For the Respondent : **Mr. Ashwani Kaundal, Advocate.**

Kuldip Singh, Judge (Oral).

This is an application of the State for grant of leave to file an appeal against judgement, dated 12.1.2006, passed by the learned Judicial Magistrate Ist Class, Court No.III, Hamirpur, in Criminal Case No. 20-II-04, RBT No. 126-II-04, under Sections 504 and 325 IPC.

2. The facts in brief are that on 5.4.2004 at about 5.30 or 6.00 p.m., Satish Kumar at place Tikkar Bhariyan abused and gave beatings to complainant Mukhtiar Singh with fist blows. The injured was taken to hospital and an FIR Ex. PW 1/A was registered. After completion of investigation, challan was put up in the court and

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Whether the reporters of the local papers may be allowed to see the Judgment?

charge was framed, under Sections 325 and 504 IPC, against the respondent. He did not plead guilty and claim trial. The prosecution examined nine witnesses. The respondent was examined, under Section 313, Cr.P.C., in which he pleaded his innocence. The respondent did not lead any evidence in defence. The learned Judicial Magistrate acquitted the respondent on 12.1.2006, hence application for leave to file an appeal.

3. Heard and gone through the record. The complainant Mukhtiar Singh appeared as PW 1 and has stated that on 5.4.2004 at about 5.00 or 6.00 p.m. he was working alongwith his wife, the respondent came and abused him. The complainant told him not to abuse in presence of ladies. On this, the respondent started beating him with fist blows. The complainant suffered injury on his forehead. He was saved by his mother and wife. The police made recovery of wooden piece (Oag) in presence of Suresh Kumar and Ashok Kumar. PW 2 Anita Devi has stated that on 5.4.2004 when she was working alongwith her husband, the respondent came there in drunken condition and started abusing. Her husband told respondent that he would take him to his house, on this respondent hit her husband with a piece of wood. The respondent also gave beatings to her mother-in-law. Her husband also sustained injuries on his hand. Her mother-in-law also sustained injury. PW 3 Suresh Kumar and PW 4 Ashok Kumar turned hostile and did not support the prosecution case.

4. PW 5 Dr. Anil Kaushal is a witness regarding X-Ray report of Mukhtiar Singh. PW 8 Dr. S.K. Singh examined the complainant Mukhtiar Singh and stated that injury on the person of

the complainant is possible by hard blow of Ex. P-1. There are major contradictions in the prosecution story. The complainant Mukhtiar Singh has not stated that his mother was given beatings by the respondent and she suffered any injury. On the contrary, PW 2 Anita Devi has stated that respondent gave beatings to her mother-in-law and she also sustained injuries. In his examination-in-chief, PW 1 Mukhtiar Singh, has not stated that he was hit by wooden piece nor he has stated that respondent injured his hand. PW 2 Anita Devi as well as PW 1 complainant have stated that they have a boundary dispute with the respondent. PW 2 has stated that respondent was under the influence of liquor, but it is not so stated by the complainant. The prosecution did not examine most material witnesses, namely the mother of the complainant and Suresh Kumar as well as Ashok Kumar. The prosecution case has not been supported by any independent witness. The learned Judicial Magistrate has taken a possible view from the material on record. This is not a fit case for grant of leave to file an appeal. Hence, the leave is rejected.

September 19, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**